

## NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek 05/10/2003  
Departmental Paperwork Clearance Officer  
Office of the Chief Information Officer  
14th and Constitution Ave. NW.  
Room 6625  
Washington, DC 20230

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for approval of the reinstatement of an information collection received on 03/12/2003.

TITLE: Vessel Monitoring System for Atlantic Highly  
Migratory Species

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE

OMB NO.: 0648-0372

EXPIRATION DATE: 05/31/2006

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	0	0	0
New	2,803,520	2,181	613
Difference	2,803,520	2,181	613
Program Change		2,181	613
Adjustment		0	0

TERMS OF CLEARANCE: None

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OMB Authorizing Official Title

Donald R. Arbuckle Deputy Administrator, Office of  
Information and Regulatory Affairs

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# PAPERWORK REDUCTION ACT SUBMISSION

**Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request	2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span> a. _____ - _____
3. Type of information collection ( <i>check one</i> ) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested ( <i>check one</i> ) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) ( <i>if applicable</i> )	
9. Keywords	
10. Abstract	
11. Affected public ( <i>Mark primary with "P" and all others that apply with "x"</i> ) a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond ( <i>check one</i> ) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden ( <i>in thousands of dollars</i> ) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting ( <i>check all that apply</i> ) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission)  Name: _____ Phone: _____

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

**NOTE:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)	
Signature	Date
Signature of NOAA Clearance Officer	
Signature	Date

**SUPPORTING STATEMENT  
VESSEL MONITORING SYSTEM FOR ATLANTIC HIGHLY MIGRATORY SPECIES  
OMB CONTROL NO. 0648-0372**

**A. JUSTIFICATION**

**1. Explain the circumstances that make the collection of information necessary.**

The purpose of this collection of information is to comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975 (ATCA; 16 U.S.C. 971), the Secretary of Commerce's obligations under the authority of the Magnuson-Stevens Act, other domestic Federal regulations, and the implementing regulations at 50 CFR part 635.

ATCA requires the Secretary of Commerce to promulgate regulations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). As a member nation of ICCAT, the United States is required to take part in the collection of biological statistics for research purposes (fishing effort and catch) and to implement a Vessel Monitoring System (VMS) program for vessels in certain fisheries. In addition to this requirement, the United States, as one of the several member nations fishing for bluefin tuna and swordfish in the Atlantic Ocean, must abide by the specific quotas assigned to it by ICCAT. A VMS program can facilitate enforcement of a fishery closure after quotas are reached.

Also, a VMS program would aid NOAA Fisheries' Office of Law Enforcement in monitoring and enforcing closed areas implemented to reduce bycatch of juvenile swordfish, billfish, sea turtles, and other bycatch necessary to comply with the Marine Mammal Protection Act, the Endangered Species Act, and National Standard 9 (bycatch and bycatch mortality reduction) of the Magnuson-Stevens Act. There are currently five areas, totaling 2,785,000 square nautical miles, that are closed to fishermen fishing for Atlantic highly migratory species (HMS) with pelagic longline gear onboard. Traditional methods of surveillance by ships and planes would be ineffective in patrolling such large areas. VMS is designed to automatically provide position reports on all vessels carrying pelagic longline gear onboard.

In 1999, NOAA Fisheries finalized a rule that operators of vessels permitted in the Atlantic tunas, swordfish and shark fisheries install and activate a VMS unit whenever they leave port with pelagic longline gear onboard. Once installed and activated, position reports are transmitted automatically to NOAA Fisheries via satellite. Due to litigation, this requirement was suspended. However, in October 2002, a Federal judge ruled in favor of NOAA Fisheries regarding the need for VMS on vessels with pelagic longline gear on board to improve enforcement of domestic and international obligations.

An installation and activation checklist must be submitted to NOAA Fisheries after installation of the VMS. Given that there are several options for VMS hardware and satellite communications services which are provided by third parties after approval by NOAA Fisheries, information regarding the individual vessel's VMS installation and service provider must be

obtained in order to ensure proper operation of the VMS unit. NOAA Fisheries therefore requires that a certification and checklist be returned to NOAA Fisheries.

**2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with applicable NOAA Information Quality Guidelines.**

A VMS unit is programmed to provide a position report of the vessel's location every hour, 24 hours a day, while the vessel is away from port. This allows vessels to traverse closed areas or remain at sea after a fishery has closed provided they do not commence fishing operations. This information will be used by NOAA Fisheries to reduce costs and improve enforcement of time/area closures, to monitor the fleet during the closed period, to deter illegal fishing, to increase efficiency of surveillance patrols, to provide probable cause for obtaining a search warrant in enforcement investigations, and to support enforcement of other regulations such as closed seasons once a quota has been reached.

The checklist indicates the procedures to be followed by the installers and, upon certification and return to NOAA Fisheries, provides the Office of Law Enforcement with information about the hardware installed and the communication service provider that will be used by the vessel operator. Specific information that links a permitted vessel with a certain transmitting unit and communications service is necessary to ensure that automatic position reports will be received properly by NOAA Fisheries. In the event that there are problems, NOAA Fisheries will have ready access to a database that links owner information with installation information. NOAA Fisheries can then apply troubleshooting techniques to contact the vessel operator and discern whether the problem is associated with the transmitting hardware or the service provider.

NOAA Information Quality Guidelines do not apply to this information collection because the information collected will not be disseminated to the public.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

VMS is the best technology available at this time for monitoring vessel locations to aid enforcement efforts. The integrated Global Positioning System (GPS) provides a near real-time mechanism for submitting accurate position reports. VMS is considered much more accurate than the existing system (i.e., logbooks) for reporting geographical distribution of fishing effort for each trip. Logbooks are submitted by fishermen seven days after offloading swordfish and only provide information regarding the start of a fishing set. Thus, logbooks provide essentially one daily location for part of the trip (trips can last for several weeks but part of it is spent steaming to the fishing grounds) and that information is not reported until after the trip is complete. VMS, on the other hand, provides 24 reports each day for the duration of the trip. This allows enforcement to react immediately if a vessel is found fishing in a closed area.

Some vessel owners, in other fisheries, have taken advantage of this technology by linking personal computers to the VMS units so that improved communications with other vessels and port facilities can be made. This has personal, business, and safety advantages for fishermen and may provide a platform for future electronic logbook reporting of both target and non-target species.

The installation checklist will be made available over the Internet. NOAA Fisheries is considering the use of electronic submission of the installation report (fax or email).

#### **4. Describe efforts to identify duplication.**

Position reports at the start of each fishing set are required in the pelagic longline logbook, and will therefore be duplicated. However, VMS position reports are automated and require no action on the part of the vessel operator. If electronic catch reporting is developed in the future, paper logbooks may become obsolete.

There are no alternate sources of such specific and near real-time vessel location and activity information. No other Federal, state or territory agencies collect this or similar information from these vessels.

#### **5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

All vessels of the United States and their owners that have permits for HMS, i.e., swordfish, sharks, and tuna, are considered small entities. The proposed regulations to implement the program would require approximately 320 pelagic longline vessels to install VMS units at an initial average cost of approximately \$2,100-3,400 (\$2,000-2,650 per unit and \$100-750 installation fee) and an annual average operation and maintenance cost of approximately \$1,365 (\$1000/year maintenance and \$1/day for position reports). In an attempt to provide vessel owners with some flexibility, NOAA Fisheries is preparing type approvals for three different VMS units from two manufacturers, and the option to choose from two satellite service providers. This should provide vessel owners with some flexibility of choice and help to minimize costs.

Vessels that have VMS on board could experience some economic benefits. They will be able to continue fishing up to the date of a closure and steam back after the closure, provided they are not fishing. Arriving in port after a market glut caused by a closure has eased would have significant positive economic benefits. Adverse impacts of mass offloading of the fleet, such as low prices, and lack of storage and transportation could be avoided as a result of the VMS program. In addition, current NOAA Fisheries regulations require fishermen who fish in the South Atlantic to offload in the South Atlantic when the North Atlantic fishery is closed due to a regulation that prohibits possession of greater than the incidental catch limit of 15 swordfish during a closed period. Vessels with a VMS are permitted to transit the North Atlantic with greater than the incidental catch limit on board, provided they are South Atlantic fish, caught

when that fishery was open. This saves significant transport and shipping costs that result from fishermen having to offload South Atlantic swordfish south of 5 degrees N. latitude.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

Using VMS to verify the location of a vessel is passive and automatic, requiring no reporting time on the part of the vessel operator. ICCAT recognizes the developments in satellite-based VMS and their possible utility, including better resource management and, thus, more effective and sustainable use of resources. More specifically, possible benefits for management include increased compliance with and enhanced enforcement effectiveness regarding area restrictions, more timely data regarding fishing effort by areas, and more timely catch reporting. Other possible benefits of the VMS include increased vessel safety and dependable and confidential communications, which may improve fleet management.

Monitoring and enforcement are essential components of fisheries management. Monitoring fishing vessels facilitates enforcement of NOAA Fisheries' conservation and management regulations by enabling detection of violations. Monitoring also promotes compliance by having a general deterrent effect. Lack of proper monitoring and enforcement makes it difficult to gauge the effectiveness of conservation and management measures and may compromise their success. In the case of overfished stocks, success is necessary to prevent further overfishing and subsequent decline to dangerously low stock levels. As a practical matter it is very difficult for enforcement personnel to effectively monitor the full operational range of the U.S. pelagic longline fleet without having some method of detecting a vessel's location. With respect to pelagic longline time/area closures in particular, the size of the closed areas makes the likelihood of detection through conventional surveillance methods rather small.

The use and submission of a checklist is required only for the initial installation or when the hardware or communications service provider changes. Less frequent reporting would prevent NOAA Fisheries and the vessel operator from confirming that the system is functioning properly.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

VMS will be reporting positions 24 times a day which is more frequently than OMB guidelines suggest. This frequency is required for the near real-time and accurate tracking of vessel activities. The requirement for 24 position reports per day is designed to allow NOAA Fisheries to distinguish between a vessel that is setting gear, and a vessel that is traversing a closed area. Fewer reports would indicate that a vessel was in the area but would not indicate if the vessel was setting gear or traversing the area. The time burden as a result of this frequency, however, remains minimal because the position reports are automated and require no action on the part of the vessel operator.



**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

A Federal Register Notice (copy attached) solicited public comment on this collection. Below is a summary of public comments submitted in response to the notice.

**Comment 1:** Several comments were received that noted the importance of fleet-wide implementation of VMS to enforce time/area closures that were implemented to reduce bycatch.

**Response:** NOAA Fisheries agrees with these comments and the need for fleet-wide implementation of VMS.

**Comment 2:** NOAA Fisheries should implement the ICCAT VMS Pilot Program that calls for ten or 10% of U.S. vessels over 24 meters in length that fish in international waters to be equipped with VMS.

**Response:** NOAA Fisheries objectives are broader than those of the ICCAT recommendation for a VMS Pilot Program, which calls for VMS on the greater of ten percent or ten vessels over 24 meters (78 feet) in length fishing on the high seas to identify the usefulness of this technology towards ICCAT's conservation requirements. The agency established VMS as a fleet-wide requirement to address National Standard 9 (to minimize bycatch and bycatch mortality) of the Magnuson-Stevens Act, and as an enforcement tool for domestic closure areas and to monitor far-ranging vessels year-round. NOAA Fisheries already conducted a pilot program in the Hawaii-based longline fleet. Based on that experience, NOAA Fisheries sought the use of VMS fleet-wide for the Atlantic pelagic longline fishery to address existing international and domestic conservation requirements. NOAA Fisheries determined that existing VMS regulations are consistent with the ICCAT recommendation.

**Comment 3:** Area closures in the Atlantic HMS fisheries target only the U.S. pelagic longline fishermen. At some future point, when and if closures apply to all fishermen and fishing vessels, VMS could be effective for enforcement if required for all vessels.

**Response:** Currently, most closed areas in the HMS fisheries apply only to pelagic longline gear. There is also an area that is closed to shark gillnet vessels during right whale calving season. NOAA Fisheries is considering the use of VMS on these vessels. If other gear types become subject to closed areas, NOAA Fisheries would consider alternatives to implement an efficient enforcement strategy, including VMS.

**Comment 4:** The regulation to require VMS discriminates against small coastal vessel owners who cannot afford the costs of purchasing, installing, maintaining and operating these expensive

systems. NOAA Fisheries should cover the cost for VMS as it did in the western Pacific longline fishery. NOAA Fisheries continues to insist on 24 reports per day, when 4-6 reports per day would be sufficient for these slow-moving vessels.

**Response:** NOAA Fisheries believes that VMS is a cost-effective enforcement tool and that the relative costs of VMS are small in comparison to other fishing costs. Current transmission costs for 24 position reports per day average \$1. NOAA Fisheries does not believe that reducing the number of transmissions from 24 to 6 would significantly lower the cost of transmissions. The requirement for 24 position reports per day is designed to allow NOAA Fisheries to distinguish between a vessel that is setting gear, and a vessel that is traversing a closed area. Fewer reports would indicate that a vessel was in the area but would not indicate if the vessel was setting gear or traversing the area. NOAA Fisheries has attempted to lower costs for vessel owners by providing several different VMS type approvals, and options for the installation, and maintenance of VMS. NOAA Fisheries does not currently have the funding to provide units to all pelagic longline fishermen or pay for the comprehensive VMS program. The basis for funding the western Pacific longline VMS was to test the feasibility and assess the costs and benefits of the system. VMS will also allow vessels to delay offloading after a seasonal closure. Delayed offloading, which usually results in higher prices, has positive economic benefits to longline fishermen.

**Comment 5:** Requiring VMS on pelagic longline vessels will not eliminate the need for at-sea enforcement. On scene observation of pelagic longline fishing would still be required to determine if such gear has been deployed. Does NOAA Fisheries anticipate requiring VMS for all recreational and commercial fishing vessels in proximity to Marine Protected Areas and Marine Sanctuary Areas?

**Response:** The unique signature pattern generated by VMS transmissions from pelagic longline vessels during the setting and hauling of fishing gear will allow enforcement personnel to monitor the closed areas for fishing violations. The wide range of the fleet and the limited enforcement resources make it difficult to detect violations in the absence of VMS. NOAA Fisheries currently has no plans to require VMS for all recreational and commercial fishing vessels. The focus is on pelagic longlines due to bycatch concerns and interactions which are more likely to result in dead discards.

**Comment 6:** These units and technology are not 100% dependable. Can NOAA Fisheries guarantee that the availability of parts and/or service technicians will never prevent a vessel from departing on schedule?

**Response:** NOAA Fisheries cannot guarantee that units will never fail, or that parts and service technicians will always be immediately available; however, past experience with the Hawaii longline fishery has shown that the technology is dependable in most cases. NOAA Fisheries takes into consideration the accuracy and reliability of VMS equipment during its type approval of equipment for the HMS fishery. The purchase of type approved equipment and proper installation according to the checklist is designed to ensure reliability.

**Comment 7:** NOAA Fisheries already requires pelagic longline fishermen to submit highly detailed reports on each fishing day, including vessel location in latitude and longitude in degrees and minutes. VMS are an unnecessary duplicate data collection.

**Response:** VMS is not an unnecessary duplication of logbook report data. Even though VMS and logbook data provide vessel location, VMS is valuable because the data is reported near real-time, in contrast to logbook reports which are submitted after off-loading. VMS provides more information regarding location and could be expanded in the future to supercede the current logbook program. Additionally, VMS can provide more reliable position estimates as demonstrated by the existence of enforcement cases involving the submission of fraudulent logbook reports.

**Comment 8:** VMS should be programmed to send an alarm and relay shorter time-frame transmissions only if a vessel ventures inside an unauthorized or closed area, rather than sending continuous and expensive transmissions unnecessarily (i.e. trigger reports). This would lower the frequency of required VMS reports (currently set at hour intervals).

**Response:** NOAA Fisheries considered these options in the past and rejected them. The trigger report option is not feasible because the programming capability for trigger reports does not currently exist for devices approved by NOAA for the HMS fleet. Both trigger reports and decreased reporting intervals would create considerable ambiguity regarding the status of the device and the vessel during those times of no transmission (i.e., whether the device was operating in legal areas, or whether the device simply had not been turned on or was in some manner malfunctioning). Near-real-time reports on vessel position, status, and activity is important for monitoring and enforcement, as it allows enforcement personnel to be dispatched to the vessel's location. It also is necessary for personnel to meet vessels for enforcement purposes as the vessels arrive at port. The Hawaii longline fishery VMS regulation requires one-hour reporting intervals for monitoring activities of longline vessels, and that scheme has proven effective for enforcement.

**Comment 10:** Pelagic longline fishing vessels take too long to set and retrieve gear to enter closed areas and fish without being noticed. NOAA Fisheries should not make VMS mandatory.

**Response:** Given the highly mobile and wide-ranging nature of the pelagic longline fleet, and the large size of closed areas, NOAA Fisheries believes that VMS is a necessary enforcement tool to prevent Illegal, Unreported, and Unregulated Fishing Activities (IUU). Making VMS mandatory is the only means to ensure fleet-wide compliance with time/area closures.

**Comment 11:** There is no need for VMS. Successful trips require 7-10 days of fishing and it would not be feasible to do this in a closed area. If NMFS is able to save enforcement dollars, then NMFS should pay for the VMS units.

**Response:** Providing for effective enforcement throughout the full operational range of the Atlantic pelagic longline fleet poses problems for conventional monitoring. Time/area closures

encompass large areas that can only be successfully monitored through the use of VMS. NMFS will use VMS to help augment and not to replace current enforcement capabilities.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

No payments or gifts are to be offered as part of this information collection.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

All automated position reports received by NOAA Fisheries will be treated as confidential data in accordance with the Magnuson-Stevens Act and NOAA Administrative Order 216-100.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

No questions of a sensitive nature are asked.

**12. Provide an estimate in hours of the burden of the collection of information.**

Based on the number of limited access permits for swordfish and tuna vessels that use pelagic longline gear, an estimated 320 vessels will be subject to the VMS requirement. Once the VMS is installed, no action is required on the part of the vessel operator except to verify that the system is on. While at sea, position reports will be automatically sent from the VMS on an hourly basis. NOAA Fisheries estimates a time burden of 5 minutes for completing a VMS installation and activation checklist during initial installation. For the estimated 320 vessels that will be required to install VMS, this amounts to an incremental burden of 27 hours.

For the 320 vessels there will be a one-time installation of 4 hours/vessel for a total of 1280 hours ( $320 \times 4 = 1280$ ) and an annual maintenance of 2 hours/vessel for a total of 640 hours ( $320 \times 2 = 640$ ). The estimated reporting time per position report is 0.3 seconds. Based upon the 0.3 seconds/report, the burden is 234 hours/year for the entire fleet; however, as noted above, these reports are automatic so no time burden is imposed on the vessel operator. Therefore, the estimated annual collection burden in the first year is 2,181 hours ( $27 + 1280 + 640 + 234 = 2,181$ ).

The number of respondents is 320. A total of 320 checklists will have to be submitted one time, and the total number of electronic responses each year is 2,803,200 ( $320 \text{ respondents} \times 24 \text{ reports/day} \times 365 \text{ days/year}$ ). The total number of annual responses for the first year is therefore 2,803,520 ( $2,803,200 + 320$ ), and 2,803,200 for subsequent years. The percentage of these responses submitted electronically is 99.9% in the first year and 100% in subsequent years.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection.**

NOAA Fisheries Office of Law Enforcement will approve three different VMS units. The cost and capability of each type of unit is slightly different. Each vessel owner can choose, from among these types, the unit that best suits his/her needs. A VMS unit, including transceiver and antenna, is expected to cost from \$2,000 to \$2,650. Installation would cost approximately \$100-750 and communication costs for required automated position reports would be about \$1 per day. Repair and maintenance costs may approach \$1,000 per year. Owners who choose VMS units with the capability to send and receive text messages would incur additional acquisition and operating costs not required by this collection.

Total annualized capital/startup costs: Assuming the average installed cost of a VMS unit to be \$2,750, with a useful life of 5 years, the total startup costs for the fleet of 320 vessels, including a one-time postage fee (\$118 for the entire fleet) for returning checklists to NOAA Fisheries, would be \$880,118 ( $2,750 \times 320 + 118$ ), and the annualized startup and recurring costs over a period of five years would total \$176,023 ( $\$880,118 / 5 \text{ years}$ ).

Total annual costs: Communications (\$365/year), repair and maintenance costs (\$1,000/year) for the fleet of 320 vessels would total \$436,800 ( $\$365 + \$1,000 \times 320$ ).

**14. Provide estimates of annualized cost to the Federal government.**

There would be no significant costs to the Federal government. NOAA Fisheries is developing an integrated hardware and tracking system to manage the various VMS programs being developed for many other U.S. fisheries. Those costs are already covered by current programs of the Office of Law Enforcement and are extraneous to this collection. Given the current capacity of these systems, incremental costs specifically attributable to the pelagic longline VMS program are negligible.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

Hours and costs are program changes from reinstatement of an expired approval. Expiration occurred because of delays due to a court case.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

No formal scientific publications based on this program are planned at this time. The data will be used for enforcement, management reports, and when drafting or evaluating fishery management plan amendments by NOAA Fisheries. However, subsequent use of the data collected over a series of years may be included in scientific papers and publications. Position data will remain confidential and will only be revealed to the public in aggregated form.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

Not applicable.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

There are no exceptions.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not employ statistical methods.

## **Vessel Monitoring Systems Installation and Activation Checklist for the Highly Migratory Species Pelagic Longline Fisheries**

**INSTRUCTIONS:** This Vessel Monitoring Systems (VMS) Installation and Activation Checklist for the Highly Migratory Species (HMS) Pelagic Longline Fisheries is provided by the National Marine Fisheries Service (NMFS) pursuant to the regulatory requirements of 50 C.F.R. ' 635.69(d). The vessel owner or operator must follow the indicated procedures when installing or re-installing an NMFS-approved VMS unit.

This checklist is applicable for the listed VMS providers currently approved for use in the HMS fisheries. Revised checklists will be provided if additional VMS providers are approved. Follow the particular checklist steps for the communications service and transmitting unit selected by the vessel owner. The vessel owner is responsible for all installation and activation costs. After completion of the installation and activation, the owner may confirm that the National Oceanic and Atmospheric Administration (NOAA) is receiving position reports by calling the NOAA OLE in St. Petersburg, Florida, at 727-570-5344, or by sending email to [vms@noaa.gov](mailto:vms@noaa.gov).

### **INSTALLATION AND ACTIVATION CHECKLIST**

1. Consult the "Vessel Monitoring System; List of Approved Mobile Transmitting Units and Communications Service Providers," published as a Notice in the Federal Register at 64 Fed. Reg. 48,988 (9/9/99), for the list of approved transmitting units and communications service providers. The list of approved units/providers is available from NMFS by calling 727-570-5344 or by obtaining the Federal Register Notice from the Internet at:  
[http://www.access.gpo.gov/su\\_documents/aces/aces140.html](http://www.access.gpo.gov/su_documents/aces/aces140.html)
2. If you already have an INMARSAT-C transmitting unit, continue to the next step. If not, go to Step 4.
3. If you have an INMARSAT-C transmitting unit that is the same make and model as the approved units, in order to qualify this unit for use in VMS, ensure the unit is functionally equivalent to the approved unit.
  - This requires you to upgrade the version of software and firmware for the unit, and/or reconfigure the message settings (unit parameters and menu options).
  - Contact the VMS provider for your make and model and upgrade your unit. After the provider performs the upgrade, go to Step 13. If you do not get an upgrade, continue to the next step.
4. Purchase new equipment and services for VMS.
  - Contact the entity(s) identified in the Notice under "VMS PROVIDER ADDRESSES" for information.
  - Identify yourself to the providers as participating in the "Highly Migratory Species VMS" to obtain the product information, pricing, unit configuration, and service options for VMS.
5. Determine the transmitting unit and communications service provider that best suit your needs.
  - Select which satellite system to use for the fishing vessel's VMS, the Argos or the INMARSAT-C.
  - If you select Argos, continue to the next step. If you select INMARSAT-C, go to Step 7.
6. Contact the Argos provider to purchase the transmitting unit and establish communications service.

- This includes applying for subscriber services, establishing credit, and setting up a billing account for ongoing communications charges.
  - The Argos provider will configure the unit to be ready for VMS (VMS message settings and satellite operations), and then ship the unit.
  - Note important, identifying information such as the Argos system ID number, unit serial number, and the user name and password to access your private position information. Go to Step 13.
7. Choose INMARSAT-C providers: one for the transmitting unit, and one for communications services.
    - The NOAA VMS is designed so that the fisherman has free choice of any combination of type-approved INMARSAT-C options.
    - Do the next two steps, Steps 8 and 9, in any order; then go to Step 10.
  8. Choose the INMARSAT-C communications service provider you prefer and establish a service contract.
    - This includes applying for subscriber services, establishing credit, and setting up a billing account for ongoing communications charges.
    - If applicable, record the important, identifying information, such as a user name and password to access your private position information and your transmitting unit, and the INMARSAT-C email address of your unit.
  9. Choose the INMARSAT-C transmitting unit you prefer.
    - If you purchase a Thrane & Thrane TT3022D, request part number "NMFS".
    - If you purchase a Trimble Galaxy TNL7005, request part number P/N 17760-45. Or, if you purchase a Trimble Galaxy Courier TNL8005, request P/N 30090-45.
    - The Thrane & Thrane provider initially will mail you only the form known as the INMARSAT Service Activation Request Form (SARF).
    - The Trimble manufacturer will enclose the SARF, together with its shipment of a unit that has been appropriately configured for VMS message settings.
  9. Register your transmitting unit for INMARSAT-C use, following these steps.
    - Fill out the SARF form referred to in the above step.
    - Fax or mail the SARF to the "routing organization" indicated on the form for U.S.-flagged vessels.
    - Enclose proof of the fishing vessel's "ship radio license" (copy of FCC Form 506) with the SARF.
    - When the SARF is processed, you will be given an "INMARSAT Number" (also known as "IMN" or "Mobile Number").
    - This number uniquely identifies your unit within the INMARSAT system, similar to a telephone number. Note this number.
  10. If you purchased a Thrane & Thrane unit, go to the next step. If you purchased a Trimble unit, go to Step 13.
  11. Contact your Thrane & Thrane provider and inform him of your INMARSAT Number and the communications service provider company name you have chosen (in Step 8).
    - The Thrane & Thrane provider will configure the unit to be ready for VMS (VMS message settings and satellite operations), and then ship the unit.
  12. Install the transmitting unit and antenna according to the installation instructions contained in the manual supplied by the manufacturer, or contact a marine electronics specialist or dealer to install the unit. (Also see Step 14.)



13. Run the cable connecting the unit in the wheelhouse to the antenna mounted outside, through a solid, immovable and permanent part of the vessel such as a bulkhead, deck, or console.
14. Turn on the power to the vessel transceiver.
  - If you purchased a Trimble unit, continue to the next step. If not, go to Step 17.
15. In order to configure the Trimble unit for satellite operations, contact your communications service provider.
  - Have Customer Service download pre-determined NMFS position report and broadcast commands ("DNIDs") from their control center to the vessel transceiver via satellite. These commands will set up and start the VMS position reporting between your INMARSAT Number and NOAA OLE.
  - Make sure the Customer Service performs this step twice, for each of INMARSAT Ocean Areas, Atlantic East and Atlantic West.
16. Confirm, by phone, with your communications service provider's Customer Service that periodic position reports are now automatically being sent to NOAA OLE.
17. The vessel owner must sign the statement certifying compliance with the installation procedures of the above steps, then submit the certified checklist to the Office for Law Enforcement (OLE), National Oceanic and Atmospheric Administration NMFS, 9721 Executive Center Drive North, Suite 130, St. Petersburg, Florida 33702.

Vessel Name: \_\_\_\_\_ HMS Permit Number: \_\_\_\_\_

VMS Transmitting Unit Manufacturer: \_\_\_\_\_

VMS Communications Service Provider: \_\_\_\_\_

**Certification:**

In accordance with 50 C.F.R. ' 635.69(d), as the owner of a vessel participating in the Highly Migratory Species Pelagic Longline Fisheries, I hereby certify that the VMS system on my vessel has been installed in compliance with the applicable procedures of this checklist.

Vessel Owner Name: \_\_\_\_\_

Vessel Owner Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Under the provisions of the Paperwork Reduction Act of 1995 (PL 104-13) and the Privacy Act of 1974 (PL 93-579), you are advised that disclosure of the information requested in the Vessel Monitoring System (VMS) checklist is mandatory for the purpose of managing the Atlantic Pelagic Longline fishery. The checklist information is used to ensure proper operation of the VMS unit. Reporting burden for the collection of information is estimated to average 4 hours per installation, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the information. The burden for submission of this checklist is estimated at 5 minutes per response. Confidentiality of the information provided will be treated in accordance with NOAA Administrative Order 216-100. It is the policy of the National Marine Fisheries Service not to release confidential data, other than in aggregate form, as the Magnuson Act protects (in perpetuity) the confidentiality of those submitting data. Whenever data are requested, the NMFS ensures that information identifying the pecuniary business activity of a particular individual is not identified. Because you have been provided with a currently valid OMB control number for a collection of information subject to the requirements of the Paperwork Reduction Act, you are required to respond to, or be subject to penalty for failing to comply with, this collection of information. Send comments regarding this burden estimate or suggestions for reducing this burden to: NMFS, Office of Law Enforcement, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

(b) A vessel, or a vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT, that is registered by any of the ICCAT contracting parties, and the vessel's catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures when landing or transshipping regulated species or when making a port call in the United States.

(c) The master of a vessel, or a vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT, must cooperate with an authorized officer during the conduct of an inspection in national and foreign ports. Inspections will be carried out so that the vessel suffers minimum interference and inconvenience, and so that degradation of the quality of catch is avoided.

**§ 635.53 Reports.**

(a) Apparent violations shall be reported by the authorized officer on a standardized ICCAT form or form produced by the national government which collects the same quality of information. The authorized officer must sign the form in the presence of the master of the vessel, who is entitled to add or have added to the report any observations, and to add his own signature. The authorized officer should note in the vessel's log that the inspection has been made.

(b) Copies of the report form must be sent to the flag state of the vessel and to the ICCAT Secretariat within 10 days. Flag states will consider and act on reports of apparent violations by foreign inspectors on a similar basis as the reports of their national inspectors in accordance with their national legislation. The vessel's flag state will notify ICCAT of actions taken to address the violation.

**Subpart F—Enforcement**

**§ 635.69 Vessel monitoring systems.**

(a) *Applicability.* To facilitate enforcement of time-area and fishery closures, an owner or operator of a commercial vessel permitted to fish for Atlantic HMS under § 635.4 and that fishes

with a pelagic longline is required to install a NMFS-approved vessel monitoring system (VMS) unit on board the vessel and operate the VMS unit whenever the vessel leaves port with pelagic longline gear on board. A vessel is considered to have pelagic longline gear on board for the purposes of this section, when gear as specified at § 635.21(c) is on board.

(b) *Hardware specifications.* The VMS hardware must be approved by NMFS and must be able to perform all NMFS required functions. NMFS will file with the Office of the Federal Register for publication notification listing the specifications for approved VMS units. As necessary, NMFS will make additions and/or amendments to the VMS hardware type approval list to account for changes in specifications or new products offered by manufacturers. NMFS will file with the Office of the Federal Register for publication notification listing such additions and/or amendments.

(c) *Communications specifications.* The communications service provider must be approved by NMFS and must be able to provide all NMFS required functions. NMFS will file with the Office of the Federal Register for publication notification listing the specifications for approved VMS communications service providers. As necessary, NMFS will make additions and/or amendments to the VMS communications service providers type approval list to account for changes in specifications or new services offered by communications providers. NMFS will file with the Office of the Federal Register for publication notification listing such additions and/or amendments.

(d) *Installation and service activation.* When installing and activating the NMFS-approved VMS unit, a vessel owner or operator must follow procedures indicated on an installation and activation checklist obtained from NMFS. Re-installation shall require the same checklist. Upon completion of installation, the vessel owner must sign a statement certifying compliance with the installation procedures of the checklist and submit such certification to NMFS as indicated on the checklist. Vessels fishing prior to submission of

## Fishery Conservation and Management

## § 635.71

the certification will be in violation of the VMS requirement.

(e) *Operation.* Owners or operators of vessels permitted, or required to be permitted, to fish for HMS that have pelagic longline gear on board, must activate the VMS to submit automatic position reports beginning 2 hours prior to leaving port and not ending until the vessel returns to port. While at sea, the unit must operate without interruption and no person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement.

(f) *Interruption.* When the vessel operator is aware that transmission of automatic position reports has been interrupted, or when notified by NMFS that automatic position reports are not being received, the vessel operator must contact NMFS and follow the instructions given. Such instructions may include but are not limited to manually communicating to a location designated by NMFS the vessel's position or returning to port until the VMS is operable.

(g) *Repair and replacement.* After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must replace or repair the VMS unit prior to the vessel's next trip. Repair or reinstallation of a VMS unit or installation of a replacement, including change of communications service provider shall be in accordance with the checklist provided by NMFS and require the same certification.

(h) *Access.* As a condition to obtaining a limited access permit for Atlantic swordfish, sharks or tunas, all vessel owners or operators using pelagic longline gear subject to the VMS provisions of this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS at the time of or after its transmission to the vendor or receiver, as the case may be.

[64 FR 29135, May 28, 1999, as amended at 64 FR 37705, July 13, 1999; 65 FR 47238, Aug. 1, 2000]

EFFECTIVE DATE NOTE: At 66 FR 1907, Jan. 10, 2001, § 635.69 was stayed indefinitely, effective Oct. 1, 2000.

### § 635.70 Penalties.

(a) *General.* See § 600.735 of this chapter.

(b) *Civil procedures for Atlantic tuna.* Because of the perishable nature of Atlantic tuna when it is not chilled or frozen, an authorized officer may cause to be sold, for not less than its reasonable market value, unchilled or unfrozen Atlantic tuna that may be seized and forfeited under ATCA and this part.

### § 635.71 Prohibitions.

In addition to the prohibitions specified in § 600.725 of this chapter, it is unlawful for any person subject to the jurisdiction of the United States to violate any provision of this part, ATCA, the Magnuson-Stevens Act, or any other rules promulgated under ATCA or the Magnuson-Stevens Act.

(a) *General.* It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(1) Falsify information required on an application for a permit submitted under § 635.4 or § 635.16.

(2) Fish for, catch, possess, retain, or land an Atlantic HMS without the appropriate valid vessel permit, LAP, or EFP on board the vessel, as specified in §§ 635.4 and 635.32.

(3) Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, any Atlantic HMS landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer, for commercial purposes, any Atlantic HMS without the appropriate valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(4) Sell or transfer or attempt to sell or transfer an Atlantic tuna, shark, or swordfish other than to a dealer that has a valid dealer permit issued under § 635.4, except that this does not apply to a shark harvested from a vessel that

(B) minimize the mortality of bycatch which cannot be avoided;

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors; and

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.

97-453, 99-659, 101-627, 102-251, 104-297

**(b) DISCRETIONARY PROVISIONS.**--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may--

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to--

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]\* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]\*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the--

(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

(C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account--

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery and any affected fishing communities, and

(F) any other relevant considerations;

(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research; and

(12) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

97-453, 104-297

## Sec. 971. Definitions

For the purpose of this chapter -

- (1) The term "Convention" means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro May 14, 1966, including any amendments or protocols which are or become effective for the United States.
- (2) The term "Commission" means the International Commission for the Conservation of Atlantic Tunas provided for in article III of the Convention.
- (3) The term "conservation recommendation" means any recommendation of the Commission made pursuant to Article VIII of the Convention and acted upon favorably by the Secretary of State under section [971c](#)(a) of this title.
- (4) The term "Council" means the Council established within the International Commission for the Conservation of Atlantic Tunas pursuant to article V of the Convention.
- (5) The term "exclusive economic zone" means an exclusive economic zone as defined in section [1802](#) of this title.
- (6) The term "fishing" means the catching, taking, or fishing for or the attempted catching, taking, or fishing for any species of fish covered by the Convention, or any activities in support thereof.
- (7) The term "fishing vessel" means any vessel engaged in catching fish or processing or transporting fish loaded on the high seas, or any vessel outfitted for such activities.
- (8) The term "Panel" means any panel established by the Commission pursuant to article VI of the Convention.
- (9) The term "person" means every individual, partnership, corporation, and association subject to the jurisdiction of the

United States.

- (10) The term "Secretary" means the Secretary of Commerce.
- (11) The term "State" includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.



## Sec. 971a. Commissioners

- (a) Appointment and number; selection of Chairman; rules of procedure; term
  - (1) The United States shall be represented by not more than three Commissioners who shall serve as delegates of the United States on the Commission, and who may serve on the Council and Panels of the Commission as provided for in the Convention. Such Commissioners shall be appointed by and serve at the pleasure of the President. Not more than one such Commissioner shall be a salaried employee of any State or political subdivision thereof, or the Federal Government. Individuals serving as such Commissioners shall not be considered to be Federal employees while performing such service, except for purposes of injury compensation or tort claims liability as provided in chapter [81](#) of title 5 and chapter [171](#) of title 28. The Commissioners shall be entitled to select a Chairman and to adopt such rules of procedure as they find necessary.
  - (2) Of the Commissioners appointed under paragraph (1) who are not governmental employees -
    - (A) one shall be appointed from among individuals with knowledge and experience regarding commercial fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea; and
    - (B) one shall be appointed from among individuals with knowledge and experience regarding recreational fishing in the Atlantic Ocean, Gulf of Mexico, or Caribbean Sea.
  - (3)
    - (A) The term of a Commissioner shall be three years.
    - (B) An individual appointed in accordance with paragraph (2) shall not be eligible to serve more than two consecutive terms as a Commissioner.
- (b) Alternate Commissioners

The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternate United States Commissioners to the Commission. Any Alternate United States Commissioner may exercise at any meeting of the Commission, Council, any Panel, or the advisory committee established pursuant to section [971b](#) of this title, all powers and duties of a United States Commissioner in the absence of any Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section who will not be present at such meeting.
- (c) Compensation

The United States Commissioners or Alternate Commissioners, although officers of the United States while so serving, shall receive no compensation for their services as such Commissioners

or Alternate Commissioners.

- (d) Travel expenses
  - (1) The Secretary of State shall pay the necessary travel expenses of United States Commissioners, Alternate United States Commissioners, and authorized advisors in accordance with the Federal Travel Regulations and sections [5701](#), [5702](#), 5704 through 5708, and 5731 of title 5.
  - (2) The Secretary may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection.

**Sec. 971b. Advisory committee**

- (a) There is established an advisory committee which shall be composed of -
  - (1) not less than five nor more than twenty individuals appointed by the United States Commissioners who shall select such individuals from the various groups concerned with the fisheries covered by the Convention; and
  - (2) the chairmen (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils established under section 302(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)). Each member of the advisory committee appointed under paragraph (1) shall serve for a term of two years and shall be eligible for reappointment. Members of the advisory committee may attend all public meetings of the Commission, Council, or any Panel and any other meetings to which they are invited by the Commission, Council, or any Panel. The advisory committee shall be invited to attend all nonexecutive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission. Members of the advisory committee shall receive no compensation for their services as such members. The Secretary and the Secretary of State may pay the necessary travel expenses of members of the advisory committee in accordance with the Federal Travel Regulations and sections [5701](#), [5702](#), 5704 through 5708, and 5731 of title 5.
- (b)
  - (1) A majority of the members of the advisory committee shall constitute a quorum, but one or more such members designated by the advisory committee may hold meetings to provide for public participation and to discuss measures relating to the United States implementation of Commission recommendations.
  - (2) The advisory committee shall elect a Chairman for a 2-year term from among its members.
  - (3) The advisory committee shall meet at appropriate times and places at least twice a year, at the call of the Chairman or upon the request of the majority of its voting members, the United States Commissioners, the Secretary, or the Secretary of State. Meetings of the advisory committee, except when in executive session, shall be open to the public, and prior notice of meetings shall be made public in a timely fashion.
  - (4)
    - (A) The Secretary shall provide to the advisory committee in a timely manner such administrative and technical support services as are necessary for the effective functioning of the committee.
    - (B) The Secretary and the Secretary of State shall furnish the advisory committee

with relevant information concerning fisheries and international fishery agreements.

- (5) The advisory committee shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this chapter, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and the Convention. The advisory committee shall publish and make available to the public a statement of its organization, practices, and procedures.
- (6) The advisory committee shall, to the maximum extent practicable, consist of an equitable balance among the various groups concerned with the fisheries covered by the Convention and shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

**Sec. 971b-1. Species working groups**

The United States Commissioners may establish species working groups for the purpose of providing advice and recommendations to the Commissioners and the advisory committee on matters relating to the conservation and management of any highly migratory species covered by the Convention. Any species working group shall consist of no more than seven members of the advisory committee and no more than four scientific or technical personnel, as considered necessary by the Commissioner.

**Sec. 971c. Authority of Secretary of State; cooperative enforcement agreements**

- (a) Recommendations from Commission

The Secretary of State is authorized to receive on behalf of the United States, reports, requests, and other communications of the Commission, and to act thereon directly or by reference to the appropriate authorities. The Secretary of State, with the concurrence of the Secretary and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, is authorized to take appropriate action on behalf of the United States with regard to recommendations received from the Commission pursuant to article VIII of the Convention. The Secretary and, when appropriate, the Secretary of the department in which the Coast Guard is operating, shall inform the Secretary of State as to what action he considers appropriate within five months of the date of the notification of the recommendation from the Commission, and again within forty-five days of the additional sixty-day period provided by the Convention if any objection is presented by another contracting party to the Convention, or within thirty days of the date of the notification of an objection made within the additional sixty-day period, whichever date shall be the later. After any notification from the Commission that an objection of the United States is to be considered as having no effect, the Secretary shall inform the Secretary of State as to what action he considers appropriate within forty-five days of the sixty-day period provided by the Convention for reaffirming objections. The Secretary of State shall take steps under the Convention to insure that a recommendation pursuant to article VIII of the Convention does not become effective for the United States prior to its becoming effective for all contracting parties conducting fisheries affected by such recommendation on a meaningful scale in terms of their effect upon the success of the conservation program, unless he determines, with the concurrence of the Secretary, and, for matters relating to enforcement, the Secretary of the department in which the Coast Guard is operating, that the purposes of the Convention would be served by allowing a recommendation to take effect for the United States at some earlier time.

- (b) Enforcement agreements

The Secretary of State, in consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, is authorized to enter into agreements with any contracting party, pursuant to paragraph 3 of article IX of the Convention, relating to cooperative enforcement of the provisions of the Convention, recommendations in force for the United States and such party or parties under the Convention, and regulations adopted by the United States and such contracting party or parties pursuant to recommendations of the Commission. Such agreements may authorize personnel of the United States to enforce measures under the Convention and under regulations of another party with respect to persons under that party's jurisdiction, and may authorize personnel of another party to enforce measures under the Convention and under United States regulations with respect to persons subject to the jurisdiction of the United States. Enforcement under such an agreement may not take place within the territorial seas or exclusive economic zone of the United States. Such agreements shall not subject persons or vessels under the jurisdiction of the United States to prosecution or assessment of penalties by any court or

tribunal of a foreign country.

**Sec. 971d. Administration**

- (a) Regulations; cooperation with other parties to Convention; utilization of personnel, services, and facilities for enforcement

The Secretary is authorized and directed to administer and enforce all of the provisions of the Convention, this chapter, and regulations issued pursuant thereto, except to the extent otherwise provided for in this chapter. In carrying out such functions the Secretary is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this chapter, and with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the government of any party to the Convention. In addition, the Secretary may utilize, with the concurrence of the Secretary of the department in which the Coast Guard is operating insofar as such utilization involves enforcement at sea, with or without reimbursement and by agreement with any other Federal department or agency, or with any agency of any State, the personnel, services, and facilities of that agency for enforcement purposes with respect to any vessel in the exclusive economic zone, or wherever found, with respect to any vessel documented under the laws of the United States, and any vessel numbered or otherwise licensed under the laws of any State. When so utilized, such personnel of the States of the United States are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Director of the Office of Personnel Management.

- (b) Primary enforcement responsibility

Enforcement activities at sea under the provisions of this chapter for fishing vessels subject to the jurisdiction of the United States shall be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating, in cooperation with the Secretary and the United States Customs Service. The Secretary after consultation with the Secretary of the department in which the Coast Guard is operating, shall adopt such regulations as may be necessary to provide for procedures and methods of enforcement pursuant to article IX of the Convention.

- (c) Regulations and other measures to carry out Commission recommendations

- (1)

- (A) Upon favorable action by the Secretary of State under section [971c](#)(a) of this title on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.
- (B) Not later than June 30, 1991, the Secretary shall promulgate any additional regulations necessary to ensure that the United States is in full compliance with all recommendations



made by the Commission that have been accepted by the United States and with other agreements under the Convention between the United States and any nation which is a party to the Convention.

- (C) Regulations promulgated under this paragraph shall, to the extent practicable, be consistent with fishery management plans prepared and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).
- (2) To promulgate regulations referred to in paragraph (1) of this subsection, the Secretary shall publish in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (A) submission of written data, views, or arguments, and (B) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations, and by a statement, based on inquiries and investigations, assessing the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being or will be carried out by countries whose vessels engage in fishing the species subject to such recommendations within the waters to which the Convention applies. After publication in the Federal Register, such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary shall prescribe. The Secretary shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that fishing operations in the Convention area of a contracting party for whom the regulations are effective are such as to constitute a serious threat to the achievement of the Commission's recommendations.
- (3) The regulations required to be promulgated under paragraph (1) of this subsection may -
  - (A) select for regulation one or more of the species covered by the Convention;
  - (B) divide the Convention waters into areas;
  - (C) establish one or more open or closed seasons as to each such area;
  - (D) limit the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed;
  - (E) limit or prohibit the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish;
  - (F) require records of operations to be kept by any master or other person in charge of any fishing vessel;
  - (G) require such clearance certificates for vessels as may be necessary to carry out the purposes of the Convention and this chapter;
  - (H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the

Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section;

- (I) require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;
  - (J) require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and
  - (K) impose such other requirements and provide for such other measures as the Secretary may determine necessary to implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention; except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish or fishing mortality level to the United States agreed to pursuant to a recommendation of the Commission.
- (4) Upon the promulgation of regulations provided for in paragraph (3) of this subsection, the Secretary shall promulgate, with the concurrence of the Secretary of State and pursuant to the procedures prescribed in paragraph (2) of this subsection, additional regulations which shall become effective simultaneously with the application of the regulations provided for in paragraph (3) of this subsection, which prohibit -
    - (A) the entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and
    - (B) the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area.
  - (5) In the case of repeated and flagrant fishing operations in the Convention area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary with the concurrence of the Secretary of State, may by regulations promulgated pursuant to paragraph (2) of this subsection prohibit the entry in any form from such country of other species covered by the Convention as may be under investigation

by the Commission and which were taken in the Convention area. Any such prohibition shall continue until the Secretary is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

- (6) Identification and notification. -
  - (A) Not later than July 1, 1996, and annually thereafter, the Secretary, in consultation with the Secretary of State, the Commissioners, and the advisory committee, shall -
    - (i) identify those nations whose fishing vessels are fishing, or have fished during the preceding calendar year, within the convention area in a manner or under circumstances that diminish the effectiveness of a conservation recommendation;
    - (ii) notify the President and the nation so identified, including an explanation of the reasons therefor; and
    - (iii) publish a list of those Nations identified under clause
      - (i) notify the President and the nation so identified,
    - (B) In identifying those Nations, the Secretary shall consider, based on the best available information, whether those Nations have measures in place for reporting, monitoring, and enforcement, and whether those measures diminish the effectiveness of any conservation recommendation.
  - (7) Consultation. - Not later than 30 days after a Nation is notified under paragraph (6), the President may enter into consultations with the Government of that Nation for the purpose of obtaining an agreement that will -
    - (A) effect the immediate termination and prevent the resumption of any fishing operation by vessels of that Nation within the Convention area which is conducted in a manner or under circumstances that diminish the effectiveness of the conservation recommendation;
    - (B) when practicable, require actions by that Nation, or vessels of that Nation, to mitigate the negative impacts of fishing operations on the effectiveness of the conservation recommendation involved, including but not limited to, the imposition of subsequent-year deductions for quota overages; and
    - (C) result in the establishment, if necessary, by such Nation of reporting, monitoring, and enforcement measures that are adequate to ensure the effectiveness of conservation recommendations.
- (d) Recommended Commission actions regarding large-scale driftnet fishing and conservation of Atlantic swordfish
  - (1) It is the sense of the Congress that the Secretary, in consultation with the Secretary of

State, should seek support for a recommendation by the Commission to ban large-scale driftnet fishing (as that term is defined in section [3](#)(16) [11](#) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(16))) in the Convention area.

- (2) The Secretary, in consultation with the Secretary of State, shall request the Commission to adopt recommendations necessary for the conservation and management of Atlantic swordfish. In making the request, the Secretary shall seek the establishment of an international minimum harvest size and a reduction in harvest levels to the extent necessary to conserve the stock. Until the Commission adopts all the conservation and management measures requested by the Secretary, the Secretary, within 3 months after each annual meeting of the Commission, shall notify Congress as to the nature and results of his request. These notifications shall identify those nations not acting to conserve and manage Atlantic swordfish, and recommend measures which could be taken to achieve effective international conservation and management of the stock.
-

## Sec. 971e. Violations

- (a) In general

It shall be unlawful -

- (1) for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section [971d](#) of this title; or
- (2) for any person subject to the jurisdiction of the United States to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish which he knows, or should have known, were taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention and adopted as regulations pursuant to section [971d](#) of this title, without regard to the citizenship of the person or vessel which took the fish.

- (b) Failure to furnish returns, records, or reports

It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this chapter to be made, kept, or furnished by such master or person.

- (c) Refusal of request to board and inspect vessel

It shall be unlawful for the master or any person in charge of any fishing vessel subject to the jurisdiction of the United States to refuse to permit any person authorized to enforce the provisions of this chapter and any regulations adopted pursuant thereto, to board such vessel and inspect its catch, equipment, books, documents, records, or other articles or question the persons onboard in accordance with the provisions of this chapter, or the Convention, as the case may be, or to obstruct such officials in the execution of such duties.

- (d) Importation of ineligible species or species under investigation

It shall be unlawful for any person to import, in violation of any regulation adopted pursuant to section [971d](#)(c) or (d) (FOOTNOTE 1) of this title, from any country, any fish in any form of those species subject to regulation pursuant to a recommendation of the Commission, or any fish in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of section [971d](#)(c) or (d) [11](#) of this title. In the case of any fish as described in this subsection offered for entry in the United States, the Secretary shall require proof satisfactory to him that such fish is not ineligible for such

entry under the terms of section [971d](#)(c) or (d) [\[1\]](#) of this title.

- (e) Sanctions

The civil penalty and permit sanctions of section [1858](#) of this title are hereby made applicable to violations of this section as if they were violations of section [1857](#) of this title.

- (f) Forfeiture

All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.

- (g) Applicability of other laws

All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as such provisions of law are applicable and not inconsistent with the provisions of this chapter.

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## Footnotes

[\[1\]](#) See References in Text note below.

## Sec. 971f. Enforcement

- (a) Particular powers

Any person authorized in accordance with the provisions of this chapter to enforce the provisions of this chapter and the regulations issued thereunder may -

- (1) with or without a warrant, board any vessel subject to the jurisdiction of the United States and inspect such vessel and its catch and, if as a result of such inspection, he has reasonable cause to believe that such vessel or any person on board is engaging in operations in violation of this chapter or any regulations issued thereunder, he may, with or without a warrant or other process, arrest such person;
- (2) arrest, with or without a warrant, any person who violates the provisions of this chapter or any regulation issued thereunder in his presence or view;
- (3) execute any warrant or other process issued by an officer or court of competent jurisdiction; and
- (4) seize, whenever and wherever lawfully found, all fish taken or retained by a vessel subject to the jurisdiction of the United States in violation of the provisions of this chapter or any regulations issued pursuant thereto. Any fish so seized may be disposed of pursuant to an order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulation of the Secretary.

- (b) International enforcement

To the extent authorized under the convention or by agreements between the United States and any contracting party concluded pursuant to section [971c](#)(b) of this title for international enforcement, the duly authorized officials of such party shall have the authority to carry out the enforcement activities specified in subsection (a) of this section with respect to persons or vessels subject to the jurisdiction of the United States, and the officials of the United States authorized pursuant to this section shall have the authority to carry out the enforcement activities specified in subsection (a) of this section with respect to persons or vessels subject to the jurisdiction of such party, except that where any agreement provides for arrest or seizure of persons or vessels under United States jurisdiction it shall also provide that the person or vessel arrested or seized shall be promptly handed over to a United States enforcement officer or another authorized United States official.

- (c) Bonds or stipulations

Notwithstanding the provisions of section [2464](#) of title 28, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the

execution of such process, or discharge any fish seized if the process has been levied, on receiving from the claimant of the fish a bond or stipulation for the value of the property with sufficient surety to be approved by a judge of the district court having jurisdiction of the offense, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value at the time of seizure and the proceeds of such sale placed in the registry of the court pending judgment in the case.



**Sec. 971g. Cooperation in carrying out Convention**

- (a) Federal and State agencies; private institutions and organizations

The United States Commissioners, through the Secretary of State and with the concurrence of the agency, institution, or organization concerned, may arrange for the cooperation of agencies of the United States Government, and of State and private institutions and organizations in carrying out the provisions of article IV of the Convention.

- (b) Scientific and other programs; facilities and personnel

All agencies of the Federal Government are authorized, upon the request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention.

- (c) Fishing operations and biological experiments

None of the prohibitions deriving from this chapter, or contained in the laws or regulations of any State, shall prevent the Commission from conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation, or shall prevent the Commission from discharging any other duties prescribed by the Convention.

- (d) State jurisdiction; preemption by Federal regulations

- (1) Except as provided in paragraph (2) of this subsection, nothing in this chapter shall be construed so as to diminish or to increase the jurisdiction of any State in the territorial sea of the United States.
- (2) In the event a State does not request a formal hearing and after notice by the Secretary, the regulations promulgated pursuant to this chapter to implement recommendations of the Commission shall apply within the boundaries of any State bordering on any Convention area if the Secretary determines that any such State -
  - (A) has not, within a reasonable period of time after the promulgation of regulations pursuant to this chapter, enacted laws or promulgated regulations which implement any such recommendation of the Commission within the boundaries of such State; or
  - (B) has enacted laws or promulgated regulations which (i) are less restrictive than the regulations promulgated pursuant to this chapter, or (ii) are not effectively enforced. If a State requests the opportunity for an agency hearing on the record, the Secretary shall not apply regulations promulgated pursuant to this chapter within that State's boundaries unless the hearing record supports a determination under paragraph (A) or (B). Such regulations shall apply until the Secretary determines that the State is effectively enforcing within its boundaries measures which are not less restrictive than such

regulations.

- (e) Continuing review of State laws and regulations

To insure that the purposes of subsection (d) of this section are carried out, the Secretary shall undertake a continuing review of the laws and regulations of all States to which subsection (d) of this section applies or may apply and the extent to which such laws and regulations are enforced.

been or will be exported from the United States and which is owned, possessed or controlled by a person subject to this order, or service any item, or whatever origin, that is owned, possessed or controlled by a person subject to this order if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this order.

Fourth, that this order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

Fifth, that, as authorized by Section 766.18(c) of the Regulations, the final six months of the denial period set forth above shall be suspended for one year from the date of entry of this Order, and shall thereafter be waived, provided that, during the period of suspension, Oerlikon has not committed a violation of the Act or any regulation, order or license issued thereunder.

Sixth, that a civil penalty of \$33,000 is assessed against Oerlikon which shall be paid to the U.S. Department of Commerce within thirty days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

Seventh, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701-3720E (1993 and Supp. 2000)), the civil penalty owned under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Oerlikon will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Eighth, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Oerlikon. Accordingly, if Oerlikon should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order

denying all of Oerlikon's export privileges for a period of one year from the date of entry of this Order.

Ninth, that the charging letter, the Settlement Agreement, and this Order shall be made available to the public.

Tenth, that a copy of this Order shall be delivered to the United States Coast Guard ALJ Docketing Center, 40 Gay Street, Baltimore, Maryland 21202-4022, notifying that office that case number 02-BXA-07 naming Oerlikon as a respondent is withdrawn from adjudication, as provided by Section 766.18(b) of the Regulations.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 12th day of November 2002.

**Michael J. Garcia,**

*Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. 02-29192 Filed 11-15-02; 8:45 am]

**BILLING CODE 3510-DT-M**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### Regulations and Procedures Technical Advisory Committee; Notice of Open Meeting

The Regulations and Procedures Technical Advisory Committee will meet on December 3, 2002, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

#### Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on pending regulations.
4. Discussion on status/plans for TSR MTOP limit regulation.
5. Discussion on deemed export license processing and standard conditions.
6. Review and discussion of encryption regulation recommendations.
7. Discussion on AES/SED issues.
8. Status of CCL user friendliness recommendations.
9. Discussion on enforcement/red flag recommendations.
10. Working group reports.
11. Election of Chair.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not

accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials, two weeks prior to the meeting date, to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BIS, MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

For more information contact Lee Ann Carpenter on (202) 482-2583.

Dated: November 13, 2002.

**Lee Ann Carpenter,**

*Committee Liaison Officer.*

[FR Doc. 02-29159 Filed 11-15-02; 8:45 am]

**BILLING CODE 3510-JT-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 111302B]

#### Proposed Information Collection; Comment Request; Vessel Monitoring System for Atlantic Highly Migratory Species

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).  
**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506 (c)(2)(A)).

**DATES:** Written comments must be submitted on or before January 17, 2003.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Chris Rilling, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315

East-West Highway, Silver Spring, MD 20910 (phone 301-713-2347).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

Under the proposed information requirement, vessels fishing for Atlantic highly migratory species (HMS) with pelagic longline gear on board would be required to install and operate a vessel monitoring system (VMS). On May 28, 1999, the National Marine Fisheries Service (NMFS) issued a regulation, 50 CFR 635.69(a), requiring all commercial pelagic longline vessels fishing for Atlantic HMS to install a NMFS-approved VMS.

The Bluewater Fisherman's Association filed a lawsuit challenging the VMS requirement, and the U.S. District Court for the District of Columbia remanded the regulation to the Secretary of Commerce for further consideration. On August 29, 2001 NMFS submitted a reconsideration memorandum to the court analyzing alternatives to and reaffirming the need for fleetwide implementation of VMS in the Atlantic pelagic longline fishery. On October 15, 2002, the U.S. District Court for the District of Columbia issued a final order that denied plaintiff's objections to the VMS regulation. Based on this ruling, NMFS is seeking to reinstate OMB approval for this information collection as required by the Paperwork Reduction Act.

If approved, automatic position reports would be submitted on an hourly basis whenever the vessel is at sea. The information would aid in the enforcement of fishery regulations and could allow for delayed offloading after a closure.

Vessel operators would also be required to follow an equipment installation checklist and submit it to NMFS. The checklist provides information on the hardware and communications service selected by each vessel. NMFS would use the returned checklists to ensure that position reports are received and to aid NMFS in troubleshooting problems.

##### II. Method of Collection

Checklists would be submitted in paper form. Position reports would be automatically sent electronically by the vessel monitoring system units.

##### III. Data

OMB Number: 0648-0372.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 320.

*Estimated Time Per Response:* 4 hours for installation of equipment; 2 hours for annual maintenance of the equipment (beginning in the second year); 0.033 seconds per automated position report from the automated equipment; and 5 minutes to complete and return a one-time installation checklist.

*Estimated Total Annual Burden Hours:* 1,101.

*Estimated Total Annual Cost to Public:* \$654,423.

##### IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 8, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02-29182 Filed 11-15-02; 8:45 am]

BILLING CODE 3510-22-S

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[I.D. 102902A]

##### Atlantic Highly Migratory Species; Advisory Panel Meetings.

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of Advisory Panel meetings.

**SUMMARY:** NMFS will hold joint meetings of the Atlantic Highly Migratory Species Advisory Panel (HMS AP) and the Atlantic Billfish Advisory Panel (Billfish AP), February 10 through 12, 2003, in Silver Spring, MD. The intent of these meetings is to consider

alternatives for the conservation and management of highly migratory species.

**DATES:** The joint HMS-Billfish AP meetings will be held from 1 p.m. to 5 p.m. on Monday, February 10; from 8 a.m. to 5 p.m. on Tuesday, February 11; and from 8 a.m. to 5 p.m. on Wednesday, February 12, 2003.

**ADDRESSES:** The AP meetings will be held in the Holiday Inn, 8777 Georgia Ave. (Rt. 97), Silver Spring, MD 20910. Phone: 301-589-0800.

An agenda and materials related to the AP meeting will be available after January 2, 2003. Please contact Carol Douglas or Othel Freeman, Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910, 301-713-2347, for meeting logistics or materials.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald G. Rinaldo, 301-713-2347.

**SUPPLEMENTARY INFORMATION:** The actions to be discussed by the APs are necessary to address requirements of the Magnuson-Stevens Fishery Conservation and Management Act and to implement recommendations of the International Commission for the Conservation of Atlantic Tunas as required by the Atlantic Tunas Convention Act, for the conservation and management of highly migratory species.

##### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dr. Rinaldo (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meetings.

**Authority:** 16 U.S.C. 961 *et seq.*, and 16 U.S.C. 1801 *et seq.*

Dated: November 8, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02-29185 Filed 11-15-02; 8:45 am]

BILLING CODE 3510-22-S

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[I.D. 111202C]

##### Mid-Atlantic Fishery Management Council (MAFMC); Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.